IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

TUESDAY, THE EIGHTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND SEVEN

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION No.32651 of 1997

Between:
Md. Asad Ali

..... PETITIONER

AND
The Regional Manager, APSRTC,
Nizamabad.

.....RESPONDENT

THE HON'BLE MR. JUSTICE S.ANANDA REDDY

WRIT PETITION No. 32651 of 1997

ORDER:

This writ petition was heard and an order, in fact, was dictated in the open Court. But, however, before signing the said order, after going through the facts of the case once again, felt that the view taken by this Court is not proper and just, and therefore, reposted the matter under the caption 'for being mentioned' and thereafter heard the parties on merits and is being disposed of afresh.

2. This writ petition is filed by the petitioner, who is a mechanic working in the respondent-Corporation aggrieved by the order passed by the Respondent, dated 20.08.1997, under which the petitioner was ordered to be reinstated as a fresh employee, by modifying the order of removal imposed on the Petitioner by the disciplinary authority, which was confirmed by the appellate authority.

3. It is stated that the disciplinary authority initiated proceedings for the unauthorized absence of the Petitioner from 18.7.1989 to 20.07.1989 and from 27.7.1989 to 4.8.1989. But, however, subsequently even during the pendency of the enquiry the Petitioner absented for 98 days either by leave, sick or absent, which constitutes misconduct as per the regulations. Therefore, another charge was even framed for such absence. The Chief Inspector was appointed as Enquiry Officer to conduct the enquiry and he submitted his report finding that the Petitioner was guilty of the charges leveled. Basing on that, the disciplinary authority passed an order of removal of the Petitioner from service by Proceedings dated 27.08.1992. The said order was assailed in an appeal before the Deputy Chief Mechanical Engineer, Nizamabad Region, who is the appellate authority. The appellate authority by his

order, dated 07.08.1997 rejected the appeal as devoid of merit. Further revision was filed before the Regional Manager, the Respondent herein. The Respondent though agreed with the findings of the authorities, however, on humanitarian grounds and keeping the Petitioner's length of service put in with the corporation, took a lenient view and ordered reinstatement of the Petitioner into service as a fresh employee, and treating the intervening period i.e., 27.8.1992 till he reported at Banswada depot as 'not on duty'. Dissatisfied with the relief of reinstatement as fresh employee, the Petitioner has come up with the present writ petition.

4. The learned counsel for the petitioner contended that the authorities below were not justified in passing an order of removal against the Petitioner on the ground that he had absented for duty for a few days. It is contended that both the removal from service and reinstatement as a fresh employee, imposed on the Petitioner is too severe and disproportionate to the offence allegedly committed by the Petitioner. Therefore, the learned counsel sought for appropriate orders to reinstate the Petitioner as regular employee, and not as a fresh employee of the corporation.

5. The learned counsel appearing for the corporation, on the other hand, sought to sustain the impugned order, and prayed for dismissal of the writ petition.

6. Heard both the learned counsel and considered the material on record.

7. The petitioner who joins the service of the respondent Corporation as Mechanic, rendered full service, though he was allegedly absent unauthorisedly for the period from 18.07.1989 to 20.07.1989 and from 27.07.1989 to 04.08.1989. For this alleged unauthorized absence, disciplinary proceedings were initiated, and finally basing on the enquiry report, the disciplinary authority passed an order of removal from service

in the year 1992 and finally by virtue of the order of the revisional authority, he was ordered to be reinstated as afresh Mechanic.

8. The petitioner was aged 56 years by the date of filing of the writ petition in the year 1997, and by the date of the order of reinstatement, he has already reached the fag-end of his carrier, and even if he is reinstated as a fresh employee, he would be losing the entire service as well as the benefits of his past service. The said punishment was imposed by the disciplinary authority for the unauthorized absence of three days on the first spell between 18.07.1989 to 20.07.1989 and about eight days in the second spell from 27.07.1989 to 04.08.1989. In fact, it was the petitioner's case that he fell sick and has even submitted sick and discharge certificate. Even assuming that the said certificates and the version of the employee was disbelieved, but imposing a punishment of removal from service is too harsh and severe to the gravity of the charge leveled against him. It is unfortunate that the appellate authority also confirmed the removal order, though the revisional authority ordered reinstatement, but that too as a fresh candidate. The punishment imposed is too severe and disproportionate and in fact, the authorities did not apply their mind as proportionately of the punishment proposed or inflicted on the petitioner.

9. Though the revisional authority has stated that he has taken lenient view on humanitarian grounds, he ought to have reinstated the petitioner with all consequential benefits though not with back wages, since the petitioner has rendered the service to the Corporation through out his life till he retired from service, though he was kept out of service under the guise of the order of punishment of removal.

10. Under the above circumstances, the order of the revisional authority, reinstating the petitioner as fresh employee, is modified as one into reinstatement with all consequential benefits, except back wages for the period during which he was out of service as a result of the order of

removal.

11. The Writ Petition is, accordingly, allowed to the extent indicated above. No order as to costs.

S.ANANDA REDDY.J

Dated: 18.09.2007
Dsr